

UNITED STATES OF AMERICA,

Plaintiff,

v.

YELLOWSTONE MOUNTAIN
CLUB, LLC; YELLOWSTONE
DEVELOPMENT, LLC;
BLIXSETH GROUP, INC.;
AND THE RANCHES AT
YELLOWSTONE CLUB, LLC,

Defendants.

Civil Action No. _____

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed the Complaint herein against Defendants Yellowstone Mountain Club, LLC; Yellowstone Development, LLC; Blixseth Group, Inc.; and The Ranches at Yellowstone Club, LLC, (collectively, "Defendants"), alleging that Defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

1

Site”) and more fully described in the Complaint, without authorization by the United States Department of the Army Corps of Engineers (“the Corps”);

WHEREAS, the Complaint also alleges that the Defendants did not comply with the terms of the Findings of Violation and Order for Compliance issued by EPA and the Montana Department of Environmental Quality on September 6, 2001;

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, Defendants deny the allegations of the Complaint and do not admit to any alleged violations of law;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the Complaint regarding the Yellowstone Mountain Club Site;

WHEREAS, the United States and Defendants agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against Defendants in this case;

WHEREAS, it is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective

of causing Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA;

WHEREAS, the United States and the Defendants agree that the specific facts and circumstances at the Yellowstone Mountain Club Site, including the unique site conditions, affect access to the Site;

WHEREAS, the United States and Defendants recognize that there is a limited, snow free season for implementation of restoration and mitigation measures at the Yellowstone Mountain Club Site; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the District of Montana pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendants conduct business in

this District, the subject property is located in this District, and the causes of action alleged in the Complaint arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendants, their officers, directors, agents, employees and servants, and their successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with any of the Defendants whether or not such person has notice of this Consent Decree. Except as provided in Paragraphs 38-42, in any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with the Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the “Restoration Sites” or “Mitigation Sites” (as described in Appendices A, B and C appended hereto and incorporated herein by reference) shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in the Restoration Sites or the Mitigation Sites, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section IX below that such notice has been given. As a condition to any such

transfer, the Defendant making the transfer shall reserve access rights to ensure compliance with the Consent Decree and assure that the transfer does not impede compliance with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all claims against Defendants, their shareholders, officers, directors, agents, employees, servants, successors or assigns, including Tim Blixseth, for injunctive relief and civil penalties alleged in the Complaint against the Defendants under CWA Sections 301 and 309 concerning the Yellowstone Mountain Club Site and arising prior to July 18, 2003.

7. Defendants shall dismiss with prejudice their appeal under the Freedom of Information Act, Docket No. 08-RIN-00082-03.

8. Defendants' obligations under this Consent Decree are joint and several.

9. Except as in accordance with this Consent Decree, Defendants and Defendants' agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

10. The parties acknowledge that, after the termination of this Consent Decree, Nationwide Permit 32, found at 67 Fed. Reg. 2020, 2084 (Jan. 15, 2002), authorizes any fill that was placed as of July 18, 2003 at the Yellowstone Mountain Club Site that is (a) within the limits of investigation described in Appendices A and B and is not required to be restored or enhanced under this Consent Decree, or (b) otherwise identified in Appendices A, B, C, D, E, or G to remain in place, subject to the conditions provided in the Nationwide Permit and this

Consent Decree. The parties further acknowledge that Nationwide Permit 32 authorizes certain discharges of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of the Nationwide Permit and this Consent Decree.

11. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, Title 75, Chapter 5, Mont. Code Ann. or any other law. With the exceptions of matters specifically addressed herein, nothing in this Consent Decree shall limit the ability of the United States Army Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

12. With the exception of matters specifically addressed herein, this Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

13. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

14. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law and Defendants reserve all defenses available to such enforcement.

15. Nothing in this Consent Decree shall constitute an admission of fact or law by any party.

IV. SPECIFIC PROVISIONS

CIVIL PENALTIES

16. Defendants shall pay a civil penalty to the United States in the amount of One Million Eight Hundred Thousand Dollars (\$ 1,800,000.00) within 45 days of entry of this Consent Decree.

17. Defendants shall make the above-referenced payment by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2001V00273, EPA Region 8 and the DOJ case number (DJ # 90-5-1-1-16831). Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Montana. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

18. Upon payment of the civil penalty required by this Consent Decree, Defendants shall provide written notice, at the addresses specified in Section IX of this Consent Decree, that such payment was made in accordance with Paragraph 17.

19. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

RESTORATION AND MITIGATION

20. Defendants shall perform restoration projects of approximately 5 acres and mitigation projects of approximately 1.5 acres of wetlands and channels under the terms and conditions stated in the Golf Course Work Plan, appended to this Consent Decree as Appendix A, the Pioneer Mountain Work Plan, appended to this Consent Decree as Appendix B, and the Stream Crossing Restoration Plan, appended to this Consent Decree as Appendix C (collectively, the “Work Plans”). Defendants shall also perform energy dissipation projects under the terms and conditions of Appendix E. Appendices A, B, C, D, E, G and H are incorporated herein by reference as an enforceable part of this Consent Decree.

21. Until this Consent Decree is terminated in accordance with Paragraph 54, the Defendants shall provide the United States with annual monitoring reports pursuant to Appendices A, B and C. The United States shall respond in writing to the annual monitoring reports by either confirming that the required success criteria specified in the Work Plans were met or providing specific reasons why the required success criteria were not met. Corrective measures shall be governed by the following: If, at any time prior to the date of the fifth anniversary of planting at a restoration or mitigation site, the restoration and mitigation projects identified in the Work Plans fail to achieve the success criteria specified therein, the Defendants shall propose corrective measures or alternative mitigation projects and a schedule for their implementation. Such corrective measures or alternative mitigation projects and a schedule for their implementation shall be submitted to the United States within 60 days of the earlier of (a) Defendants’ discovery of the failure to meet success criteria or (b) Defendants’ receipt of the

United States' written position that success criteria were not met. Defendants shall implement the corrective measures or alternative mitigation projects upon approval by the United States and in accordance with a schedule for implementation approved by the United States. The parties expressly recognize that schedules for corrective measures and alternative mitigation projects must take into account the limited snow-free season at the Yellowstone Mountain Club Site. All disputes arising under this paragraph are subject to dispute resolution procedures in Section VI of this Consent Decree.

22. A. With respect to any culverts remaining in place at the Yellowstone Mountain Club Site listed on Appendix D hereto, the United States reserves the right to inspect such culverts and require energy dissipation measures with respect to such culverts located in jurisdictional waters at any time prior to November 30, 2004, in accordance with Appendix E. Any disputes between the United States and Defendants concerning any requirements to perform energy dissipation measures at culverts remaining in place shall be subject to the dispute resolution procedures in Section VI of this Consent Decree.

B. With respect to culverts in place at the Yellowstone Mountain Club Site listed on Appendix H, which presently are identified by Defendants as stormwater culverts and as such not subject to the requirements described elsewhere in the Consent Decree, the United States reserves the right to inspect such culverts for the purpose of requiring, by written notice, that any of the listed culverts be moved from Appendix H to Appendix D at any time prior to November 30, 2004. The inclusion of any culverts on Appendix H is not intended to be and shall not be construed as agreement by the United States that installation of the listed culverts was properly authorized under the Clean Water Act. Any disputes between the United States

and Defendants concerning the movement of a culvert from Appendix H to Appendix D shall be subject to the dispute resolution procedures in Section VI of this Consent Decree.

23. Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any restoration or mitigation location identified in Appendices A, B and C, except as approved by EPA. In the case of activities that are alleged to indirectly disturb any location where restoration or mitigation has occurred, the United States shall have the burden of proving the claimed indirect effect, notwithstanding any provision of Paragraphs 35-37.

24. To ensure that all restoration and mitigation projects identified in Appendices A, B and C remain undisturbed, Defendants shall, within fifteen (15) days of entry of this Consent Decree, record a certified copy of this Consent Decree with the Office of the Clerk and Recorder, in Madison County, Montana. Thereafter, each deed, title, or other instrument conveying an interest in any of the restoration or mitigation sites identified in Appendices A, B and C shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

25. The maps presented in Appendices A, B, C and G establish a baseline record that identifies wetlands and other waters of the United States, areas of investigation and locations of disturbance alleged to constitute fills within the mapped areas. The information presented in Appendices D, E and H establish a baseline record that identifies culverts, some of which are alleged to constitute fills. With the exception of matters addressed in this paragraph, nothing in this Consent Decree shall effect ongoing or future submission of delineations or requests for

jurisdictional determinations for any part of the Yellowstone Mountain Club Site not shown in the Appendices.

26. The Findings of Violation and Order for Compliance issued by EPA and the Montana Department of Environmental Quality on September 6, 2001 (the “Order”) shall be superceded and terminated upon entry of this Consent Decree. Defendants shall submit to EPA a copy of the Corrective Action Plan for Sites 2009 (Second Yellow Mule Creek) and 2013 (Moose Lake Road Hairpin Turn) at the same time Defendants submit their Corrective Action Plan to the State pursuant to the Administrative Order on Consent, Docket No. WQ-04-03.

27. Within 15 calendar days of entry of this Consent Decree, Defendants shall retain a third-party independent contractor to serve as a technical expert for monitoring (the “Technical Expert”) to oversee performance of the injunctive relief required under the Consent Decree under a contract with the terms shown in Appendix F. Defendants and the United States agree that Mr. Michael Claffey shall serve as the Technical Expert and perform the duties described above. The Technical Expert shall not be employed by Defendants to perform any other tasks for Defendants during the period of the Consent Decree without the prior approval of the United States. Defendants’ obligation to pay the Technical Expert and any persons he employs shall be limited to a maximum of: \$35,000 during the year Defendants commence work under any of the Work Plans, \$35,000 during the subsequent year, and \$15,000 per year during the third, fourth and fifth years after Defendants commence work under any of the Work Plans.

28. In the event that the Technical Expert is unable to complete his responsibilities, the parties agree to arrange expeditiously for a replacement Technical Expert. Within 30 calendar days of notice that the Technical Expert is unable to complete his responsibilities,

Defendants shall submit to the United States the names, statements of qualifications, and resumes or curriculum vitae for at least three Technical Expert candidates. The United States may nominate additional candidates for inclusion on the list and consideration by Defendants. The United States shall notify Defendants if it disapproves any of the candidates. Upon notice from the United States that the remaining candidates are acceptable to the United States, Defendants shall have 21 calendar days to finalize selection of the replacement Technical Expert, notify the United States of Defendants' selection, and present the United States with a copy of the proposed contract between Defendants and the selected Technical Expert. Any disputes between the United States and Defendants concerning the replacement of a Technical Expert shall be subject to the dispute resolution provisions in this Consent Decree. Except as provided in Paragraphs 38-42, replacement of the Technical Expert shall not constitute a reason for delay by the United States in performing its duties under this Consent Decree.

29. Mr. Michael Claffey, the Technical Expert designated in Paragraph 27, has previously been retained by the United States as a consulting expert in this case. Defendants and the United States agree that, notwithstanding Mr. Claffey's role as Technical Expert, the United States has the right to use Mr. Claffey as a consulting expert or expert witness again in the future in this and other cases.

V. NOTICES AND OTHER SUBMISSIONS

30. Within 30 days after the deadline for completing tasks set forth in Table 7 of Appendix A, Table 11 of Appendix B, Table 1 of Appendix C of this Consent Decree, and Paragraphs 1 and 3 of Appendix E, Defendants shall provide the United States with written notice, at the addresses specified in Section IX of this Consent Decree, of whether or not that

task has been completed, identifying the date of completion and any other pertinent information including, if the task has not been completed, an explanation of why the task has not been completed. The United States shall respond in writing to the notice of completion within 60 days by either confirming that the task has been completed or providing specific reasons why the task was not completed. If a notice of completion is received after September 1 and weather prevents the United States from verifying task completion, the United States shall respond in writing to the notice of completion by July 15 of the following year. Defendants' report of final completion of all tasks required under this Consent Decree shall be submitted to the United States by August 1 of the year of final completion. Confirmation by the United States that a task has been completed does not establish compliance with any other provision of the Consent Decree.

31. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendants shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

32. Until ten years after entry of this Consent Decree, Defendants shall preserve and retain all final records and documents now in their possession or control or which come into their

possession or control that provide information concerning performance of the tasks in Appendices A, B and C, regardless of any corporate retention policy to the contrary. Until ten years after entry of this Consent Decree, Defendants shall also instruct their contractors and agents to preserve all final documents and records that provide information concerning performance of the tasks in Appendices A, B and C.

33. At the conclusion of the document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, during the ten year period of record retention, upon request by the United States, Defendants shall deliver any such records or documents to EPA. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information required to be submitted to EPA under the requirements of the Consent Decree shall be withheld on the grounds that they are privileged. Any disputes concerning protection of privileged information will be subject to dispute resolution under this Consent Decree.

34. A. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times with 24 hours notice to Defendants' Registered Agent, currently Stephen R. Brown (406-523-2500), to

enter the Yellowstone Mountain Club Site to monitor the activities required by this Consent Decree, including:

- 1) Verifying any data or information submitted to the United States;
- 2) Obtaining samples;
- 3) Inspecting and evaluating Defendants' restoration and/or mitigation activities;

and

- 4) Inspecting and reviewing any records required to be kept under the terms and conditions of this Consent Decree.

B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and to obtain information from the Defendants as authorized by law.

VI. DISPUTE RESOLUTION

35. Any dispute that arises with respect to the meaning or requirements of any provision of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and Defendants affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. The decision at the informal negotiation stage will be made by the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. If a dispute between the United States and Defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the

informal negotiations period, the Defendants file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

36. If the United States or Defendants (hereinafter "claimant") believe that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment or affect construction during the construction season, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The responding party shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, responding party shall have the burden of proving by a preponderance of the evidence that the claimant's position is not in accordance with the objectives of this Consent Decree and the CWA, and that the respondent's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

37. Absent action by the Court, the filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree, except as provided in Paragraph 45 below regarding payment of stipulated penalties.

VII. FORCE MAJEURE

38. Defendants shall perform the actions required under this Decree within the time limits set forth, agreed to in writing, or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to timely apply for federal, state or local permits.

39. If Defendants believe that a Force Majeure event has affected Defendants' ability to perform any action required under this Consent Decree, Defendants shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in Section IX. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

40. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with EPA to determine when to begin or resume the operations that had been affected by any Force Majeure event.

41. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VI of this Consent Decree.

42. Defendants shall bear the burden of proving that the noncompliance at issue was caused by a Force Majeure event and the number of days of noncompliance that were caused by such circumstances.

VIII. STIPULATED PENALTIES

43. After entry of this Consent Decree, if Defendants fail to timely fulfill any requirement of the Consent Decree (including those identified in Appendices A, B and C), the Defendants shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- | | | |
|----|---|--------------------|
| A. | For Day 1 up to and including
Day 30 of non-compliance | \$1000.00 per day |
| B. | For Day 31 up to and including
60 of non-compliance | \$3,000.00 per day |
| C. | For Day 61 and beyond
of non-compliance | \$5,000.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

44. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VI and/or the Force Majeure provisions in Section VII shall be resolved upon motion to this Court as provided in Paragraphs 35 and 36.

45. The filing of a motion requesting that the Court resolve a dispute shall stay Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by Defendants as provided in this Section. The United States retains the authority, in its sole discretion, to reduce stipulated penalties as the facts or circumstances may allow.

46. To the extent Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 38 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

47. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

48. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2001V00273, EPA Region 8 and the DOJ case number (DJ # 90-5-1-1-16831). Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Montana. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice, at the addresses specified in Section IX of this Decree.

IX. ADDRESSES

49. Except as noted below, all notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

- (1) Wendy I. Silver, Esq.
Legal Enforcement Program (8ENF-L)
United States Environmental Protection Agency
999 18th Street
Denver, Colorado 80202

- (2) Director, Montana Field Office
United States Environmental Protection Agency
Region 8, Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59626-0096

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE (Only notices of property transfer and completion)

- (1) Alan Greenberg, Esq.
Environmental Defense Section
U.S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202
- (2) Leif M. Johnson, Esq.
United States Attorney's Office
P.O. Box 1478
Billings, MT 59103

C. TO DEFENDANTS:

- (1) Margaret N. Strand, Esq.
Venable LLP
575 7th Street NW
Washington, DC 20004-1601
- (2) Stephen R. Brown, Esq.
Garlington Lohn & Robinson PLLP
P.O. Box 7909
Missoula, Montana 59807-7909
- (3) Robert Sumpter
Yellowstone Mountain Club
P.O. Box 161097
Big Sky, MT 59716

X. COSTS OF SUIT

50. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendants subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendants for noncompliance with or enforcement of this Consent Decree.

XI. PUBLIC COMMENT

51. A. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts or considerations which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

B. The parties acknowledge that after the lodging and before the entry of this Consent Decree, the Defendants agree to perform the work required under Appendices A, B, C and E that is scheduled to occur prior to the date of entry of the Consent Decree. Defendants agree to continue to perform this work prior to entry of this Consent Decree unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

XII. CONTINUING JURISDICTION OF THE COURT

52. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIII. MODIFICATION

53. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Defendants and approved by the Court. Notwithstanding this provision, the following modifications will not require approval by the Court: (1) Modifications of deadlines or other obligations or duties contained in the Appendices that result from written agreements reached by the United States and Defendants that do not arise from invocation of informal dispute resolution and (2) Modifications of deadlines or other obligations or duties that result from Force Majeure events under paragraphs 38-42.

XIV. TERMINATION

54. The Court shall terminate the terms of this Consent Decree, except for Paragraphs 23 and 32, upon joint motion of the parties, or upon motion filed with the Court by the United States or Defendants after the following have been completed:

- A. Defendants have timely and satisfactorily completed all of the actions required by this Consent Decree;

- B. Defendants have paid all monies and penalties due under this Consent Decree;
- C. Defendants have submitted a certification to the United States that conditions A. and B. above have been met; and
- D. The United States has concurred in writing with Defendants' certified contention that conditions A. and B. have been met or has not objected within 90 days following receipt of Defendants' certified contention.

If the United States disputes Defendants' contention that they have complied with these conditions, the provision of Section VI (Dispute Resolution) shall be invoked. This Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court. Within 30 days of termination of this Consent Decree, Defendants will record a certified copy of the Order of Termination with the Office of the Clerk and Recorder, in Madison County, Montana.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2004.

United States District Judge

ON BEHALF OF THE UNITED STATES:

WILLIAM W. MERCER
United States Attorney
District of Montana

Leif Johnson
Assistant United States Attorney
P.O. Box 1478
Billings, MT 59103

Dated: _____

THOMAS L. SANSONETTI
Assistant Attorney General
JOHN C. CRUDEN
Deputy Assistant Attorney General
Environment and Natural Resources Division

Alan D. Greenberg, Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202

Dated: _____

Thomas Skinner
Acting Assistant Administrator for Enforcement
and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building South
1200 Pennsylvania Ave. NW
Washington DC 20460

Dated: _____

Dated: _____

CAROL RUSHIN
Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice
United States Environmental Protection Agency
Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2466

Dated: _____

WENDY I. SILVER
Enforcement Attorney
United States Environmental Protection Agency
Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2466

FOR DEFENDANTS:

YELLOWSTONE MOUNTAIN CLUB, LLC:

Yellowstone Mountain Club, LLC
By its Manager, Blixseth Group, Inc.

By _____
Robert P. Sumpter, Authorized Representative

YELLOWSTONE DEVELOPMENT, LLC:

Yellowstone Development, LLC
By its Manager, Blixseth Group, Inc.

By _____
Robert P. Sumpter, Authorized Representative

THE RANCHES AT YELLOWSTONE CLUB, LLC:

The Ranches at Yellowstone Club, LLC
By its Manager, Blixseth Group, Inc.

By: _____
Robert P. Sumpter, Authorized Representative

BLIXSETH GROUP, INC.:

Blixeth Group, Inc.

By _____
Timothy L. Blixeth, President